

THE HONORABLE ROBERT S. LASNIK

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JULI ADAMS,

Plaintiff,

v.

THE HARTZ MOUNTAIN
CORPORATION,

Defendant.

Case No. 2:14-cv-1174 RSL

**SUPPLEMENTAL DECLARATION
OF ANDREA L. CALVARUSO IN
FURTHER SUPPORT OF
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

I, ANDREA L. CALVARUSO, hereby declare as follows:

1. I am a member of the firm of Kelley Drye & Warren LLP, counsel to Defendant, The Hartz Mountain Corporation ("Hartz" or "Defendant") in this matter. I make this declaration in support of Defendant's Motion for Summary Judgment.

2. I am over the age of eighteen (18), and am competent to testify regarding the facts stated herein.

3. The basis for my knowledge is my review of the files maintained by Kelley Drye & Warren LLP as part of its representation of Defendant, including the documents attached hereto.

4. Attached hereto as **Exhibit 1** is a true and correct copy of excerpts from the deposition of Irina Briller, taken on August, 12, 2015.

5. Attached hereto as **Exhibit 2** is a true and correct copy of excerpts from the deposition of Adam Coacher, taken on August 19, 2015.

SUPPLEMENTAL DECLARATION OF ANDREA L. CALVARUSO
IN FURTHER SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT
Case No. 2:14-cv-1174-RSL

LANE POWELL PC
1420 FIFTH AVENUE, SUITE 4200
P.O. BOX 91302
SEATTLE, WA 98111-9402
206.223.7000 FAX: 206.223.7107

1 6. Attached hereto as **Exhibit 3** is a true and correct copy of a document produced
2 by Hartz in this action bearing bates number Hartz 018383.

3 7. Attached hereto as **Exhibit 4** is a true and correct copy of a document produced
4 by Hartz in this action bearing bates numbers Hartz 000065, Hartz 000062, Hartz 00059, and
5 Hartz 000057.

6
7 This Declaration is made under penalty of perjury under the laws of the United States this 30th
8 day of October, 2015.

9 DATED: October 30, 2015
10 New York, New York

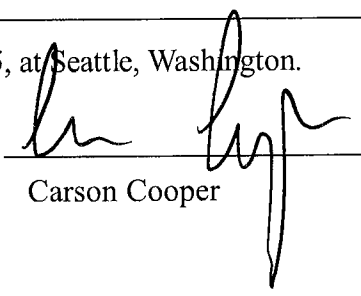
11 /s/ Andrea L. Calvaruso
12 Andrea L. Calvaruso
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CERTIFICATE OF SERVICE

Pursuant to RCW 9.A.72.085, the undersigned certifies under penalty of perjury under the laws of the State of Washington and the United States, that on the 30th day of October, 2015, the document attached hereto was presented to the Clerk of the Court for filing and uploading to the CM/ECF system. In accordance with their ECF registration agreement and the Court's rules, the Clerk of the Court will send e-mail notification of such filing to the following persons:

Anthony D. Shapiro Hagens Berman Sobol Shapiro LLP 1918 Eighth Avenue, Suite 3300 Seattle, WA 98101-1244 Telephone: (206) 623-7292 Facsimile: (206) 623-0594 E-Mail: tony@hbsslaw.com	Simon B. Paris Saltz Mongeluzzi, Barrett & Bendesky, PC One Liberty Place, 52 nd Floor 1650 Market Street Philadelphia, PA 19103 Telephone: (215) 575-3985 E-Mail: sparis@smbb.com
Thomas E. Loeser Hagens Berman Sobol Shapiro LLP 1918 Eighth Avenue, Suite 3300 Seattle, WA 98101-1244 Facsimile: (206) 623-0594 E-Mail: toml@hbsslaw.com	Patrick Howard Saltz Mongeluzzi, Barrett & Bendesky, PC One Liberty Place, 52 nd Floor 1650 Market Street Philadelphia, PA 19103 Telephone: (215) 575-3985 E-Mail: phoward@smbb.com
Daniel E. Gustafson Gustafson Gluek PLLC 120 South 6 th Street, Suite 2600 Minneapolis, MN 55402 Telephone: (612) 333-8844 E-Mail: dgustafson@gustafsongluek.com	Jonathan K. Cooperman <i>pro hac vice</i> Kelley Drye & Warren LLP 101 Park Avenue New York, NY 10178-0062 Telephone: (212) 808-7534 Facsimile: (212) 808-7897 E-Mail: jcooperman@kelleydrye.com
Andrea L. Calvaruso <i>pro hac vice</i> Kelley Drye & Warren LLP 101 Park Avenue New York, NY 10178-0062 Telephone: (212) 808-7853 Facsimile: (212) 808-7897 E-Mail: acalvaruso@kelleydrye.com	

Executed on the 30th day of October, 2015, at Seattle, Washington.



Carson Cooper

Exhibit 1

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF WASHINGTON AT SEATTLE
3 Case No. 2:14-cv-1174-RSL

4 JULI ADAMS,

5 Plaintiff,

6 vs.

VIDEOTAPED
DEPOSITION OF:
IRINA BRILLER

7 THE HARTZ MOUNTAIN, CORP.,

8 Defendant.

9 - - - - -

10 TRANSCRIPT of the stenographic notes of
11 the proceedings in the above-entitled matter, as
12 taken by and before CAROL ANN SHEPARD, a Certified
13 Court Reporter of the State of New Jersey, held at
14 the office of KELLEY DRYE & WARREN, LLP, One
15 Jefferson Road, Parsippany, New Jersey, on
16 Wednesday, August 12, 2015, commencing at 9:30 in
17 the forenoon.

18
19
20
21
22 VERITEXT LEGAL SOLUTIONS
MID-ATLANTIC REGION
23 1801 Market Street - Suite 1800
Philadelphia, PA 19103
24
25

A P P E A R A N C E S:

HAGENS BERMAN SOBOL & SHAPIRO, L.L.P.
1918 Eighth Avenue, Suite 3300
Seattle, Washington 98101
206-623-7292
tony@hbsslaw.com

BY: ANTHONY D. SHAPIRO, ESQ.
Attorneys for the Plaintiff

SALTZ MONGELUZZI BARRETT & BENDESKY, P.C.
1650 Market Street
Philadelphia, Pennsylvania 19103
215-575-3985
phoward@smbb.com

BY: PATRICK HOWARD, ESQ.
Attorneys for the Plaintiff

KELLEY, DRYE & WARREN, LLP
One Jefferson Road
Parsippany, New Jersey 07054
973-503-5900
jcooperman@kelleydrye.com
BY: JONATHAN K. COOPERMAN, ESQ.
Attorneys for the Defendant

1 A. When you're excited about a project and
2 you need to get it done, I don't think you sit there
3 and you, you know, remember that you left at, like,
4 7 P.M. or 8 P.M. You just get it done. I don't
5 remember. It was four years ago.

6 Q. Okay. So you go through this process,
7 you do the P&L, you get the creative team, you
8 figure out what the toys will sell for. Do you come
9 back to Mr. Coacher with -- with all this
10 information?

11 A. Yes.

12 Q. Okay. And then what's the next step?

13 A. Well, interestingly enough, when we did
14 start going through this process, our coordinator,
15 Helen, told us that we actually used to sell Angry
16 Birds before, and she pulled out a couple of the
17 toys. So I asked our legal team whether we owned
18 the trademark, and I was told that we do own the
19 trademark. I thought that was a great negotiation
20 tactic that we could actually use with Rovio. And
21 you know, I mentioned that to Adam, as well.

22 Q. Okay. You said during this process,
23 your coordinator, Helen, mentioned that you used to
24 sell Angry Birds toys.

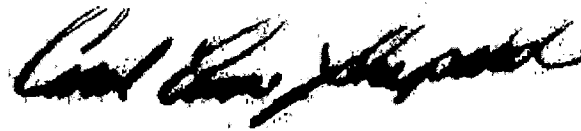
25 A. Yes.

CERTIFICATE

I, CAROL ANN SHEPARD, a Notary Public and Certified Shorthand Reporter of the State of New Jersey, License No. 30X100101900, do hereby certify that prior to the commencement of the examination, IRINA BRILLER was duly sworn by me to testify the truth, the whole truth and nothing but the truth.

I DO FURTHER CERTIFY that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.



Certified Court Reporter of the State of New Jersey

Dated: August 24, 2015

Exhibit 2

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF WASHINGTON AT SEATTLE
3 Case No. 2:14-cv-1174-RSL

4 JULI ADAMS,

5 Plaintiff,

6 vs.

VIDEOTAPED
DEPOSITION OF:
ADAM COACHER

7 THE HARTZ MOUNTAIN, CORP.,

8 Defendant.

9 - - - - -

10 TRANSCRIPT of the stenographic notes of
11 the proceedings in the above-entitled matter, as
12 taken by and before CAROL ANN SHEPARD, a Certified
13 Court Reporter of the State of New Jersey, held at
14 the office of KELLEY DRYE & WARREN, LLP, One
15 Jefferson Road, Parsippany, New Jersey, on
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A P P E A R A N C E S:

HAGENS BERMAN SOBOL & SHAPIRO, L.L.P.
1918 Eighth Avenue, Suite 3300
Seattle, Washington 98101
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BY: THOMAS E. LOESER, ESQ.
Attorneys for the Plaintiff

KELLEY, DRYE & WARREN, LLP
One Jefferson Road
Parsippany, New Jersey 07054
973-503-5900
jcooperman@kelleydrye.com
BY: JONATHAN K. COOPERMAN, ESQ.

Attorneys for the Defendant

ALSO PRESENT:

Daniel McClutchy, Videographer

1 the Angry Birds trademark, if you had to do it over
2 again, would you look into whether or not Juli Adams
3 had any right to the Angry Birds trademark?

4 MR. COOPERMAN: Objection.

5 A. I guess I would ask counsel to, you
6 know, make sure we weren't going down a road that
7 would get us in trouble later. That just makes
8 sense.

9 MR. LOESER: This a good time for a
10 short break?

11 A. Let me clarify or add to that.

12 I can't remember that I did ask that
13 question specifically. It seems like I would have.
14 And the -- see, the idea that I operated under
15 moving forward from that was that Hartz owned the
16 trademark and not Juli Adams. So there didn't seem
17 to be any reason, once -- once I had the knowledge
18 that Hartz owned the trademark, and I did see that
19 in writing, I had no reason to think about Juli
20 Adams anymore.

21 Q. I understand. So, after Bob Shipley
22 told you, hey, we own the trademark, and, by the
23 way, you should have known that we owned the
24 trademark, that's what he said to you; right?


25 MR. COOPERMAN: Objection.

CERTIFICATE

I, CAROL ANN SHEPARD, a Certified Court Reporter of the State of New Jersey, License No. 30X100101900, do hereby certify that prior to the commencement of the examination, ADAM COACHER was duly sworn by me to testify the truth, the whole truth and nothing but the truth.

I DO FURTHER CERTIFY that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.



Certified Court Reporter of the State of New Jersey

Dated: August 31, 2015

Exhibit 3

Tina Le Lay

From: Tina Le Lay
Sent: Wed 1/31/2007 10:35 PM (GMT-00:00)
To: Scott Yacovino; scott.yacovino
Cc:
Bcc:
Subject: Fw: Julie Adams

Scott,

?????????

Tina

Tina Le Lay
Director Marketing
The Hartz Mountain Corporation
400 Plaza Drive
Secaucus, NJ 07094-3688
Tel: 201.271.4800 ext. 7755
tlelay@hartz.com

— Forwarded by Tina Le Lay/MLJ on 01/31/2007 05:35 PM —

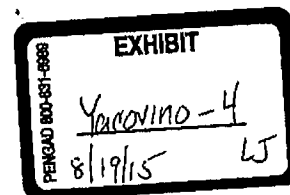
cgoldberg@hartz.com	To:	tlelay@hartz.com
	cc:	
01/31/2007 05:25 PM	Subject:	Julie Adams

Please respond to
cgoldberg@hartz.com

2 things - we need to debrief on this program. We will need to figure out if Tim had spoken w/her as we are not going to need her at Global Pet. Maybe Scott knows.

2nd - I think we need a "name" for this line - not just "the art of Julie Adams"

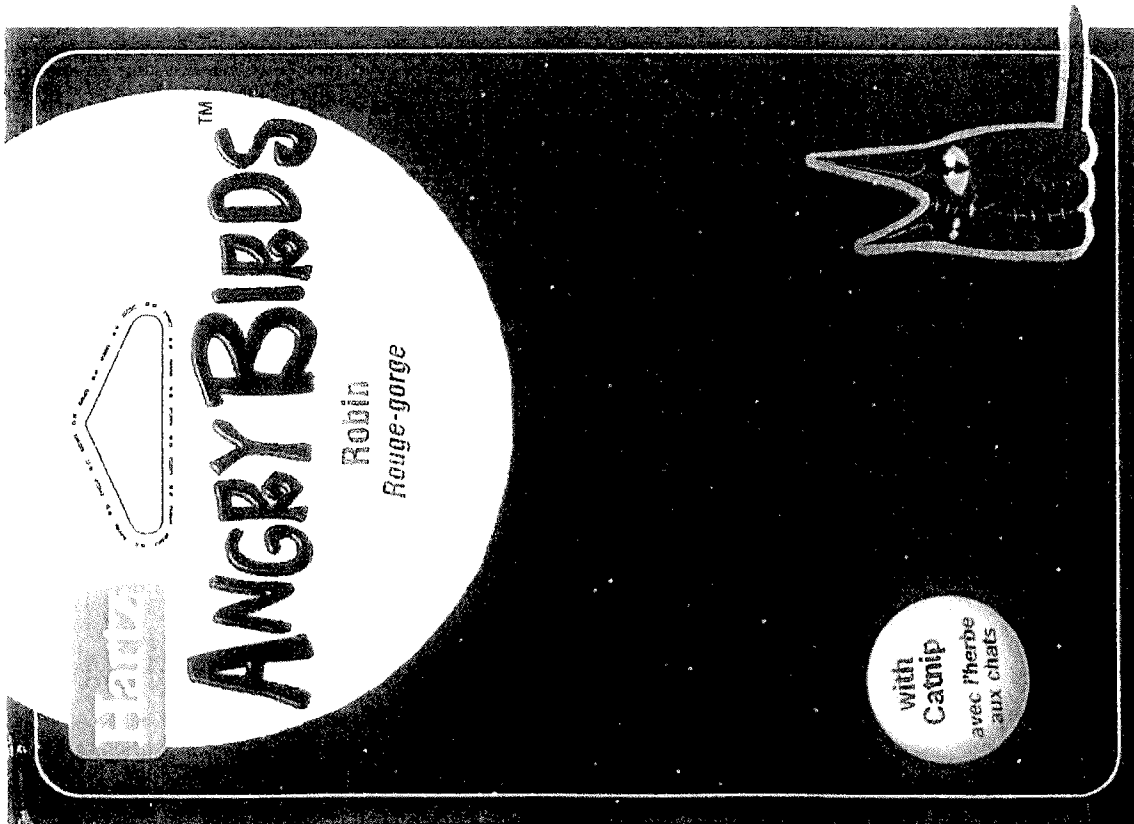
TTFN
Sent from my Verizon Wireless BlackBerry



Hartz 018383

Exhibit 4

11/4/15 J. Adams



CONFIDENTIAL

HARTZ 000065

Hartz® Angry Birds™ are angry because you are buying them as playthings for your cats. But don't feel bad. These birds were bred to be confrontational.


Supervise your pet. For play only. Not a child's toy. Toy should be removed and replaced if excessive wear or damage occurs.

Hartz® Angry Birds™ sont en rogne parce que vous les achetez comme jouets pour vos chats. Mais ne vous culpabilisez pas. Ces oiseaux ont été élevés pour être combattifs.

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www.juliadams.com

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Créations de Juli Adams sont déposées - tous droits réservés.
Visit www.hartz.com for more information.
Visitez www.hartz.com pour plus d'information.

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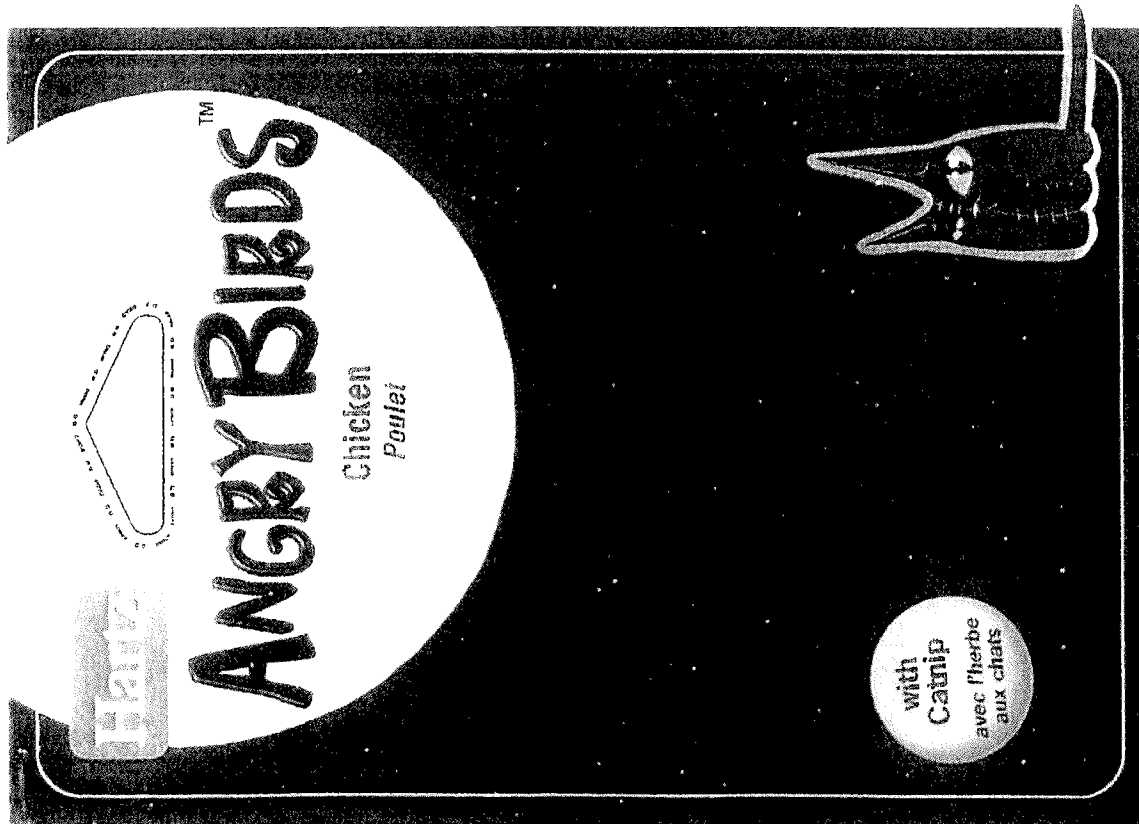
0 32700 10675 11

EXHIBIT	17
Adams	
DATE:	8-21-15
Cindi L. Ullman, CCR	

File Name: 10675 503711 Robin ABirdLai
Packaging Spec:
Artist: Jorge 03/05/07 New Layout
Artist: Jorge 03/07/01 Text edits and 5th Edition
04/07 - RCO, proof changes, back on color

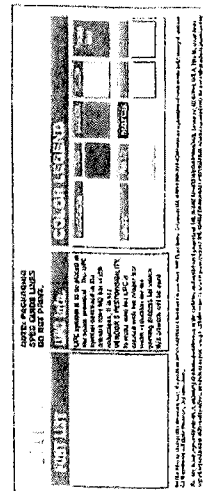
HARTZ CORPORATION 10000 15th Avenue SW Burien, WA 98148 Tel: 206.835.1234 Fax: 206.835.1235 www.hartz.com	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th>ITEM</th> <th>QTY</th> <th>UNIT</th> <th>PRICE</th> <th>TOTAL</th> </tr> <tr> <td>10675 503711 Robin ABirdLai</td> <td>1</td> <td>EA</td> <td>10.00</td> <td>10.00</td> </tr> </table>	ITEM	QTY	UNIT	PRICE	TOTAL	10675 503711 Robin ABirdLai	1	EA	10.00	10.00	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th>ITEM</th> <th>QTY</th> <th>UNIT</th> <th>PRICE</th> <th>TOTAL</th> </tr> <tr> <td>10675 503711 Robin ABirdLai</td> <td>1</td> <td>EA</td> <td>10.00</td> <td>10.00</td> </tr> </table>	ITEM	QTY	UNIT	PRICE	TOTAL	10675 503711 Robin ABirdLai	1	EA	10.00	10.00	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th>ITEM</th> <th>QTY</th> <th>UNIT</th> <th>PRICE</th> <th>TOTAL</th> </tr> <tr> <td>10675 503711 Robin ABirdLai</td> <td>1</td> <td>EA</td> <td>10.00</td> <td>10.00</td> </tr> </table>	ITEM	QTY	UNIT	PRICE	TOTAL	10675 503711 Robin ABirdLai	1	EA	10.00	10.00
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10675 503711 Robin ABirdLai	1	EA	10.00	10.00																													

Printed @ 100%



File Name: 10074 903715 Chicken ASbird.ai
 Packaging Spec:
 Artist: Jorge 030507 New Layout
 Artist: Jorge 030707 Text and Top Edits
 Artist: Jorge 030707 Text Edits and Flip Edits
 030707 - Rob: proof changes, back on Esbn

Printed @ 100%



CONFIDENTIAL

HARTZ 000062



Hartz® Angry Birds™ are angry because you are buying them as playthings for your cats. But don't feel bad. These birds were bred to be confrontational.

Supervise your pet. For play only. Not a child's toy. Toy should be removed and replaced if excessive wear or damage occurs.

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Learned from the art of Juli Adams.
 Copies de Juli Adams sous licence - www.juliadams.com
 Visit www.hartz.com for more information.
 Visitez www.hartz.com pour plus d'information.

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503715



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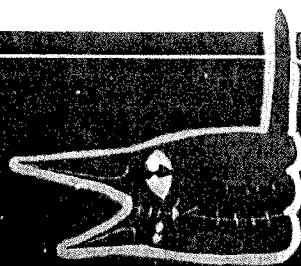
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Visit www.nartx.com for more information.
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 St. Thomas, Ontario N5P 3W7, Canada. Hartz® est une marque déposée de The Hartz Mountain Corporation.

503712



ANGRY BIRDS™

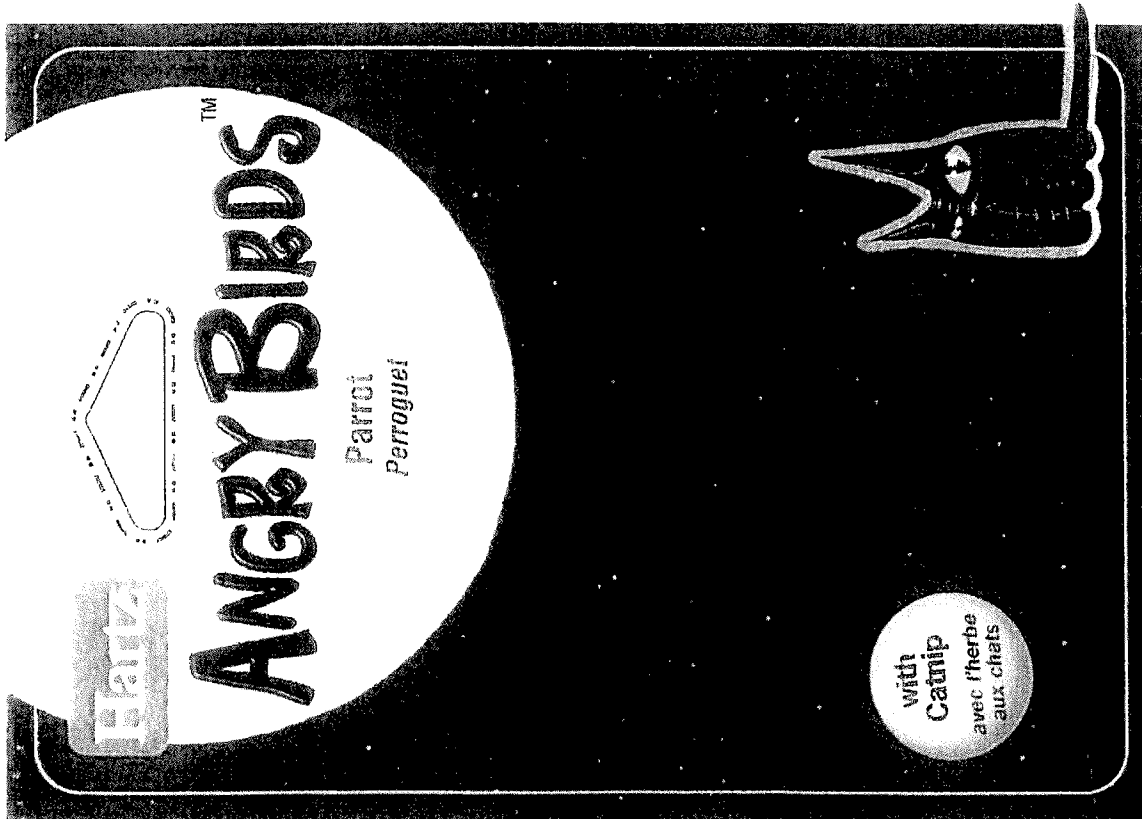
Rooster
Cog

with
Catnip

File Name: 1671 503712 Rooster ABird.ai
Packaging Spec:
Artist: Jorge 03/05/07 New Layout
Artist: Jorge 03/06/07 New Layout and Text
Artist: Jorge 03/07/07 New Text edits and Fly
4/07 - Hob: proof changes, back on Edin

Printed @ 100%

[illegible]



File Name: 10572 503713 Parrot ABird.ai
 Packaging Spec:
 Artist: Jorge 0305/07 New Layout
 Artist: Jorge 0305/07 New Text edits
 Artist: Jorge 0307/07 Text edits and Fit Eden
 4/4/07 - 1100 proof changes, back on Eden

Printed @ 100%



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503713